

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CARLSBAD UNIFIED SCHOOL  
DISTRICT AND SAN DIEGO COUNTY  
OFFICE OF EDUCATION.

OAH Case No. 2016050704

ORDER GRANTING MOTION TO  
DISMISS SECTION 504 CLAIM AND  
SAN DIEGO COUNTY OFFICE OF  
EDUCATION'S MOTION TO BE  
DISMISSED AS A PARTY

On May 6, 2016, Student filed a due process hearing request naming Carlsbad Unified School District and San Diego County Office of Education as respondents. Issue 3 in Student's complaint alleges that both respondents failed to provide Student with necessary accommodations pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.) This is the sole issue alleged against San Diego COE.

On May 17, 2016, Carlsbad filed a motion to dismiss Issue 3 asserting that it is outside of OAH's jurisdiction. Student did not respond to the motion. On May 27, 2016, ALJ Lunsford issued an order denying Carlsbad's motion without prejudice because the motion did not include a proper proof of service. On June 1, 2016, Carlsbad filed an amended motion to dismiss Student's Issue 3 on the same basis alleged before, this time including a proper proof of service.

On June 1, 2016, San Diego COE filed a motion to dismiss Issue 3 asserting that OAH lacks jurisdiction over Section 504 claims. San Diego COE also seeks to be dismissed as a party as this is the sole issue alleged in Student's complaint against San Diego COE.

Student did not respond to either motion to dismiss.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other

public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.).

## DISCUSSION

Issue 3 in Student’s complaint alleges that both respondents violated Section 504 by failing to provide Student necessary accommodations. This allegation is beyond OAH’s jurisdiction and will be dismissed. As this is the sole issue alleged in Student’s complaint against San Diego COE, its motion to be dismissed as a party is granted.

## ORDER

1. Carlsbad and San Diego COE’s Motion to Dismiss Issue 3 in Student’s complaint is granted.

2. San Diego COE’s motion to be dismissed as a party is granted.

IT IS SO ORDERED.

DATE: June 7, 2016

DocuSigned by:

Joy Redmon

JOY REDMON

Administrative Law Judge  
Office of Administrative Hearings